

Below is an Order of the Court.

  
TRISH M. BROWN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF OREGON

In re:

COLONIAL OAKS MOBILE HOME PARK,  
LLC,

Debtor.

Case No. 18-33183-tmb11

FINAL ORDER UNDER SECTIONS 361  
AND 363 OF THE BANKRUPTCY CODE,  
AUTHORIZING DEBTOR TO USE CASH  
COLLATERAL AND TO GRANT  
ADEQUATE PROTECTION

This matter came before the Court on October 15, 2018, on the Motion For Final Order Under Sections 361 and 363 of the Bankruptcy Code, Authorizing Debtor to Use Cash Collateral and to Grant Adequate Protection [ECF Doc #28] filed by Colonial Oaks Mobile Home Park, LLC, (the “Debtor”), as debtor in possession. Based on the entire record of this case, the Court makes the following findings of fact and conclusions of law:

A. On September 12, 2018 (the “Petition Date”), the Debtor filed herein a voluntary petition under Chapter 11 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been requested or appointed and no official committee of creditors has been appointed.

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AND GRANTING ADEQUATE PROTECTION

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B. The following creditors (each a “Secured Creditor” and collectively the “Secured Creditors”) may claim a lien in the Debtor’s cash collateral (as defined in § 363(a)), as follows:

<b>Lien Creditor</b>	<b>Amount Owing</b>	<b>Property Value</b>	<b>Brief Collateral Description</b>
Polk County	\$50,000	\$1,800,000	Tax Lien on real property
AMR Investment Group, LLC	\$765,000	\$1,800,000	Deed of Trust and Assignment of Rents Recorded 8/2/2011 Instrument No. 2011-007045
OBB Partners, LLC	\$250,000 (Disputed)	\$1,800,000	Deed of Trust and Assignment of Rents Recorded 2/14/18 Instrument No. 2008-001866
Kenneth W. Hick	\$149,000	\$1,800,000	Deed of Trust and Assignment of Rents recorded 2/6/2012 Instrument No. 2012-001046
Brian Leitgeb, as Personal Representative for Estate of Irwin Leitgeb	\$939,564.39 (Disputed)	\$1,800,000	Deed of Trust and Assignment of Rents recorded 12/04/2006 Instrument No. 2006-019817

C. The relief requested in the motion (i) is necessary to enable the Debtor to continue the operation of its business in an orderly manner, to make deposits with utility service providers, to pay payroll and other post -petition operating expenses, and to satisfy other working capital and operational needs, (ii) constitutes a critical element to achieving a successful outcome to this Chapter 11 case for creditors and other parties, and (iii) best serves the interests of the estate.

D. Absent authority to use cash collateral, the Debtor will have to curtail or terminate its business operations to the detriment of all parties in interest. Among other things, the disruption or termination of business operations would have a material and adverse effect on the value of the Debtor’s business. The Debtor’s use of cash collateral will enable it to maintain the going concern value of its business and the value of the real property.

E. AMR Investment Group, LLC (“AMR”) filed an objection to the Debtor’s proposed use of cash collateral [ECF No. 34]. After filing its objection, AMR entered in to a stipulation with the Debtor, consenting to the use of cash collateral under the terms of this Order.

The adequate protection offered to the Secured Creditors in the motion is reasonable and appropriate in the circumstances.

F. Notice of the hearing on the motion was reasonable and sufficient in the circumstances.

Based on the foregoing, it is hereby ORDERED that:

1. The Debtor is authorized to use \$83,326 of cash collateral for the period of October 15, 2018, through and including February 23, 2019 (the “Budget Period”) in accordance with the attached Exhibit 1 (the “Budget”). Debtor’s authority to use Cash Collateral is limited to the uses set forth in the Budget, together with a 10% aggregate variance.

2. As adequate protection, the Lien Creditors are granted replacement liens upon all post-petition assets of the Debtor which are of the identical description to its pre-petition collateral, with the same relative priority vis-à-vis each other that existed as of the Petition Date.

3. Additionally, as adequate protection, Debtor shall make or cause to be made interim adequate protection payments to AMR in the amount of \$6,300.00 each month beginning on or before November 1, 2018 and continuing on or before the first day of each month thereafter (or the first business day following the first day of the month should the first day of the month fall on a weekend or federal holiday). Payments to AMR should be mailed to PO Box 10307, Eugene, OR 97440. Should the Debtor fail to pay the payments set forth in paragraph 1 above, and if the Debtor fails to cure such default after 10 days’ written notice from AMR to the Debtor’s attorney, then AMR’s consent to use cash collateral shall be revoked, and Debtor’s authority to use cash collateral will terminate.

4. Debtor will timely perform and complete all actions necessary and appropriate to protect Lien Creditors’ collateral against diminution in value.

5. Nothing in this Order shall be construed to (a) grant a security interest in the Debtor’s avoidance powers; (b) convert any pre-petition obligations into post-petition obligations; (c) require payment of any obligations on confirmation of a plan of reorganization,

except as otherwise provided under the Bankruptcy Code; (d) alter, improve, limit or impair the rights, if any, of parties claiming to have rights of reclamation against Debtor, or its assets or (e) enhance the secured position of any creditor as of the Petition Date. Further, nothing in this order shall preclude Lien Creditors from asserting claims for any further amounts that may be owed by the Debtor.

6. Debtor is authorized to execute and deliver to Lien Creditors such instruments considered by each Lien Creditor to be necessary or desirable to perfect the secured interests and liens given to the Lien Creditor, and the Lien Creditor is authorized to receive, file, and record the same.

7. Nothing contained in this Order shall constitute a determination as to the amount, validity, or priority of any pre-petition obligation, security interest, or lien and all rights of parties in interest to claim that any pre-petition lien or security interest in Debtor's property is unperfected, unenforceable, invalid, or voidable, are reserved. Additionally, nothing in this Order shall constitute an admission or acknowledgement by Debtor that any party has a valid or perfected lien in the cash of Debtor now existing or subsequently received, and the references herein to "Cash Collateral" are without prejudice to all rights, defenses, and claims of Debtor to contend that any party does not have a perfected lien or security interest in such collateral.

8. Debtor's authority to use Cash Collateral may be extended beyond the amount in Paragraph 1 or the Budget Period by mutual agreement of the Debtor and the Lien Creditors. In the event of such agreement, Debtor may submit a further order extending Debtor's authority to use Cash Collateral on the same terms and conditions as provided herein without an additional motion or hearing. Notice of the proposed extension, including the applicable Budget, shall be provided to creditors and parties in interest with 14 days for filing objections thereto. If no objections are received, the extension order will take effect upon its stated date of commencement.

9. In the event of a default under the terms of this Order, and unless the Debtor cures such default within ten (10) days after receiving written notice of the default, the Debtor's right to use Cash Collateral shall be terminated and the Debtor shall be further prohibited from using Cash Collateral without obtaining a court order allowing such use.

10. Except as specified in Section 10 below, and except as otherwise authorized by an order of this Court, the Debtor shall deposit all funds received since the Petition Date and during the pendency of this case in the Debtor's bank account or accounts and that all expenses of the Debtor during the pendency of this case shall be paid from such accounts. Debtor shall not prepay expenses except in the ordinary course of business or as authorized by a court order.

11. Debtor is authorized to pay Debtor's Counsel in accordance with the Budget, and any payments received by counsel shall be held in trust until appropriate fee applications are made and approved by the Bankruptcy Court.

12. The amounts and categories described in the Budget are deemed a carve-out, pursuant to 11 U.S.C. § 506(c), of the Lien Creditors' collateral.

13. This Order does not contain any of the "disfavored provisions" listed in LBF #541.5.

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I certify that I have complied with the requirements of LBR 9021-1 (a)(2)(A).

Order Presented by:

MOTSCHENBACHER & BLATTNER, LLP

/s/ Nicholas J. Henderson

Nicholas J. Henderson, OSB #074027

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Of Attorneys for Debtor

First Class Mail: See Attached List.

Electronic Mail:

The foregoing was served on all CM/ECF participants through the Court's Case Management/Electronic Case File system

**EXHIBIT 1**  
**CASH COLLATERAL BUDGET**

Week Ending	10/20/2018	10/27/2018	11/3/2018	11/10/2018	11/17/2018	11/24/2018	12/1/2018	12/8/2018	12/15/2018
<b>Initial Cash Balance</b>	\$ 33,828.87	\$ 23,069.87	\$ 22,869.87	\$ 16,044.87	\$ 17,255.87	\$ 29,957.87	\$ 18,971.87	\$ 18,771.87	\$ 12,271.87
<b>Cash Inflows:</b>									
Rent Income	\$ -	\$ -	\$ -	\$ 1,500.00	\$ 14,500.00	\$ 1,500.00	\$ -	\$ -	\$ 16,000.00
Late Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 150.00	\$ -	\$ -	\$ -
Misc. Income	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Cash Inflows:</b>	\$ -	\$ -	\$ -	\$ 1,500.00	\$ 14,500.00	\$ 1,650.00	\$ -	\$ -	\$ 16,000.00
<b>Operating Expenses:</b>									
Landscaping	\$ (368.00)	\$ -	\$ -	\$ -	\$ (368.00)	\$ -	\$ -	\$ -	\$ -
Property Mgt Fees	\$ (1,120.00)	\$ -	\$ -	\$ -	\$ (1,120.00)	\$ -	\$ -	\$ -	\$ -
Insurance	\$ (110.00)	\$ -	\$ -	\$ -	\$ (110.00)	\$ -	\$ -	\$ -	\$ -
Property Tax	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (5,000.00)	\$ -	\$ -	\$ -
Water & Sewer	\$ (3,536.00)	\$ -	\$ -	\$ -	\$ -	\$ (3,536.00)	\$ -	\$ -	\$ -
Garbage & Recycling	\$ (900.00)	\$ -	\$ -	\$ -	\$ -	\$ (900.00)	\$ -	\$ -	\$ -
Maintenance and Repair	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)
Parts and Supplies	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)
Advertising	\$ (89.00)	\$ -	\$ -	\$ (89.00)	\$ -	\$ -	\$ -	\$ -	\$ (89.00)
Licenses & Permits	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Misc. Expense	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)
<b>Total Operating Expenses:</b>	\$ (6,323.00)	\$ (200.00)	\$ (200.00)	\$ (289.00)	\$ (1,798.00)	\$ (9,636.00)	\$ (200.00)	\$ (200.00)	\$ (289.00)
<b>Other Expenses:</b>									
Water/Sewer Deposit	\$ (3,536.00)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Garbage Deposit	\$ (900.00)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Professional Fees (M&B) <sup>(1)</sup>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (3,000.00)	\$ -	\$ -	\$ -
Professional Fees (Levinson)		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
AMR Adequate Protection	\$ -	\$ -	\$ (6,300.00)	\$ -	\$ -	\$ -	\$ -	\$ (6,300.00)	\$ -
UST Fees	\$ -	\$ -	\$ (325.00)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Other Expenses:</b>	\$ (4,436.00)	\$ -	\$ (6,625.00)	\$ -	\$ -	\$ (3,000.00)	\$ -	\$ (6,300.00)	\$ -
<b>Total Cash Outflows:</b>	\$ (10,759.00)	\$ (200.00)	\$ (6,825.00)	\$ (289.00)	\$ (1,798.00)	\$ (12,636.00)	\$ (200.00)	\$ (6,500.00)	\$ (289.00)
<b>Remaining Cash Balance</b>	\$ 23,069.87	\$ 22,869.87	\$ 16,044.87	\$ 17,255.87	\$ 29,957.87	\$ 18,971.87	\$ 18,771.87	\$ 12,271.87	\$ 27,982.87

NOTES:

(1) Administrative expense allocation for Motschenbacher & Blattner LLP is to be held in trust, pending court approval of fees and costs.

Week Ending	12/22/2018	12/29/2018	1/5/2019	1/12/2019	1/19/2019	1/26/2019	2/2/2019	2/9/2019	2/16/2019
<b>Initial Cash Balance</b>	\$ 27,982.87	\$ 23,398.87	\$ 20,198.87	\$ 12,198.87	\$ 13,409.87	\$ 23,325.87	\$ 20,125.87	\$ 19,925.87	\$ 12,775.87
<b>Cash Inflows:</b>									
Rent Income	\$ 1,500.00	\$ -	\$ -	\$ 1,500.00	\$ 16,000.00	\$ -	\$ -	\$ -	\$ 17,500.00
Late Fees	\$ 150.00	\$ -	\$ -	\$ -	\$ 150.00	\$ -	\$ -	\$ -	\$ -
Misc. Income	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 150.00
<b>Total Cash Inflows:</b>	\$ 1,650.00	\$ -	\$ -	\$ 1,500.00	\$ 16,150.00	\$ -	\$ -	\$ -	\$ 17,650.00
<b>Operating Expenses:</b>									
Landscaping	\$ (368.00)	\$ -	\$ -	\$ -	\$ (368.00)	\$ -	\$ -	\$ -	\$ (368.00)
Property Mgt Fees	\$ (1,120.00)	\$ -	\$ -	\$ -	\$ (1,120.00)	\$ -	\$ -	\$ -	\$ (1,120.00)
Insurance	\$ (110.00)	\$ -	\$ -	\$ -	\$ (110.00)	\$ -	\$ -	\$ -	\$ (110.00)
Property Tax	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Water & Sewer	\$ (3,536.00)	\$ -	\$ -	\$ -	\$ (3,536.00)	\$ -	\$ -	\$ -	\$ (3,536.00)
Garbage & Recycling	\$ (900.00)	\$ -	\$ -	\$ -	\$ (900.00)	\$ -	\$ -	\$ -	\$ (900.00)
Maintenance and Repair	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)	\$ (100.00)
Parts and Supplies	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)
Advertising	\$ -	\$ -	\$ -	\$ (89.00)	\$ -	\$ -	\$ -	\$ -	\$ (89.00)
Licenses & Permits	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Misc. Expense	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)	\$ (50.00)
<b>Total Operating Expenses:</b>	\$ (6,234.00)	\$ (200.00)	\$ (200.00)	\$ (289.00)	\$ (6,234.00)	\$ (200.00)	\$ (200.00)	\$ (200.00)	\$ (6,323.00)
<b>Other Expenses:</b>									
Water/Sewer Deposit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Garbage Deposit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Professional Fees (M&B) <sup>(1)</sup>	\$ -	\$ (3,000.00)	\$ -	\$ -	\$ -	\$ (3,000.00)	\$ -	\$ -	\$ -
Professional Fees (Levinson)	\$ -	\$ -	\$ (1,500.00)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
AMR Adequate Protection	\$ -	\$ -	\$ (6,300.00)	\$ -	\$ -	\$ -	\$ -	\$ (6,300.00)	\$ -
UST Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (650.00)	\$ -
<b>Total Other Expenses:</b>	\$ -	\$ (3,000.00)	\$ (7,800.00)	\$ -	\$ -	\$ (3,000.00)	\$ -	\$ (6,950.00)	\$ -
<b>Total Cash Outflows:</b>	\$ (6,234.00)	\$ (3,200.00)	\$ (8,000.00)	\$ (289.00)	\$ (6,234.00)	\$ (3,200.00)	\$ (200.00)	\$ (7,150.00)	\$ (6,323.00)
<b>Remaining Cash Balance</b>	\$ 23,398.87	\$ 20,198.87	\$ 12,198.87	\$ 13,409.87	\$ 23,325.87	\$ 20,125.87	\$ 19,925.87	\$ 12,775.87	\$ 24,102.87

NOTES:

(1) Administrative expense allocation for Motschenbacher & Blattner LLP is to be held in trust, pending court approval of fees and costs.



Week Ending	2/23/2019	Grand Total
<b>Initial Cash Balance</b>	\$ 24,102.87	
<b>Cash Inflows:</b>		
Rent Income	\$ -	\$ 70,000.00
Late Fees	\$ -	\$ 450.00
Misc. Income	\$ -	\$ 150.00
<b>Total Cash Inflows:</b>	\$ -	\$ 70,600.00
<b>Operating Expenses:</b>		
Landscaping	\$ -	\$ (1,840.00)
Property Mgt Fees	\$ -	\$ (5,600.00)
Insurance	\$ -	\$ (550.00)
Property Tax	\$ -	\$ (5,000.00)
Water & Sewer	\$ -	\$ (17,680.00)
Garbage & Recycling	\$ -	\$ (4,500.00)
Maintenance and Repair	\$ -	\$ (1,800.00)
Parts and Supplies	\$ -	\$ (900.00)
Advertising	\$ -	\$ (445.00)
Licenses & Permits	\$ -	\$ -
Misc. Expense	\$ -	\$ (900.00)
<b>Total Operating Expenses:</b>	\$ -	\$ (39,215.00)
<b>Other Expenses:</b>		
Water/Sewer Deposit	\$ -	\$ (3,536.00)
Garbage Deposit	\$ -	\$ (900.00)
Professional Fees (M&B) <sup>(1)</sup>	\$ (3,000.00)	\$ (12,000.00)
Professional Fees (Levinson)	\$ -	\$ (1,500.00)
AMR Adequate Protection	\$ -	\$ (25,200.00)
UST Fees	\$ -	\$ (975.00)
<b>Total Other Expenses:</b>	\$ (3,000.00)	\$ (44,111.00)
<b>Total Cash Outflows:</b>	\$ (3,000.00)	\$ (83,326.00)
<b>Remaining Cash Balance</b>	\$ 21,102.87	

NOTES:

(1) Administrative expense allocation for Motschenbacher & Blattner LLP is to be held in trust, pending court approval of fees and costs.